IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6267 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VEDNARAYAN DEVDUTT

Versus

Z.S. SAIYAD

Appearance:

MS KUSUM M SHAH for Petitioners

M/S MG DOSHIT & CO for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 07/03/2000

ORAL JUDGEMENT

#. Ms.Kusum Shah for the petitioner, Mr.M.G.Doshit & Co., for the respondent nos.1 and 3 Mr. Digant Joshi, learned Asstt. Govt. Pleader appears for the respondent instructed by Mr.M.G.Doshit & Co.

#. The present Special Civil Application is filed by the two petitioners one Vednarayan Devdutt, unarmed Police Constable B.No.494 serving in Western Railway Police since 1970 and another woman Police Constable serving since 16.4.78. The petition is filed against an order of dismissal dtd.6.3.1986 passed by Western Railway Police Officer, Vadodara in the departmental proceedings which were initiated against the aforesaid two petitioners under the charge-sheet dtd.1.12.1984 alleging that both the accused persons while serving at Godhara Western Railway Police Station, though they were married and had children and had a living spouse and no.1 had a living wife and though both of them knew about the said fact, had married on 18.8.1980 and thereafter they sworn an affidavit in Godhara Court on 31.1.1982, which is a serious misconduct as they both belong to a disciplinary force and the employees of public service.

#. A departmental inquiry was held and the Dy. Police Officer Departmental Inquiry Godhara, Panchmahal, held that the charges levelled against the accused are not proved beyond doubt and therefore it is held to be, "not proved". Ms.Shah appearing for the petitioners has invited attention of the court in detail to the report of the inquiry officer and has categorically drawn attention of the court to an affidavit filed by the wife of the petitioner no.1 dtd.31.1.1982- Sonavati that she had four children of the wedlock with petitioner no.1 two sons and two daughters of which two sons have expired and that she is not keeping good health for last five years and that she does not have any chance of getting a son born and that she is not able to look after her husband and therefore she had suggested to her husband to have a second marriage and therefore her husband with her consent has married to petitioner no.2 Ratanben Becharbhai. Ms. Shah has also invited attention of the court that after the aforesaid marriage had taken place on 18.8.80, the entry was made in the service book of the petitioner no.1 on 22.10.80 of SDPO and that thereafter petitioner nos.1 and 2 had three children of the said wedlock and after a lapse of almost four and half year that the present departmental inquiry was initiated against the petitioners. Ms. Shah also invited the attention of the court to the fact that in some of the communities of Gujarat specially in the community belonging to backward areas and in the community of Adivasi, according to the ritual of the community the husband and wife can have divorce by having a writing executed in presence of the panchas/leaders of the community. However, only with a view to give that writing a form of legality such writing is executed on a

stamp paper of Rs.10/-. The said writing on stamp paper is only with a view to see that no dispute arises between the parties and therefore if a writing in question is on a plain paper, in the presence of the panchas/leaders of the community, the said writing cannot be said to be illegal. Ms. Shah also invited my attention to the relevant observations made by the inquiry officer in this regard, who has also recorded that no objection raised by either of the petitioners is on record of the case and therefore the writing executed on a plain paper is also acceptable, in his opinion. The inquiry officer has recorded the finding that it cannot be said that on 18.8.80, the petitioner no.2 the woman - police constable Ratanben was married. The inquiry officer has also come to the conclusion that the parties could have effected the second marriage by taking the necessary permission from the competent authority and in this view of the matter the inquiry officer held that the charges levelled against the petitioners are not proved.

#. It appears from the papers that the Western Railway Vadodara passed impugned order dtd.6.3.1986 holding that it can not be believed that the petitioners did not know about the provision to intimate about the marriage to the competent authority. It was also held by the disciplinary authority that the petitioners are supposed to know their duty (to inform the authority of the marriage) and also the provisions of law and therefore the contention raised on behalf of the petitioners in this regard was not accepted. Disciplinary authority also observed that the divorce taken by the petitioner no.2 on a plain paper cannot be accepted and therefore, after making the aforesaid observation the disciplinary authority was pleased to pass an order of dismissal of both the petitioners from the services. It is against this impugned order that an appeal came to be filed before the Dy. Chief Police Officer, Western Railway, Gujarat State, Ahmedabad, being No.EST/GB.2/CK/950/86 wherein an order came to be passed on 11-10/11-86 wherein the authority concerned after discussing in detail, came to the conclusion that,

" When we took overall view of the fact on record, I find that charges preferred against the appellant no.1 and 2 have been properly established from the evidence on record. I also find that the charges preferred against them being of serious nature deserves adequate punishment. I also found that considering the gravity of the misconduct which I have discussed earlier, the punishment from dismissal of service

is appropriate and adequate. I, therefore, reject the appeal of appellant no.1 and 2 and confirm the order of dismissal passed by the disciplinary authority."

#. Ms. Shah invited the attention of the court to Rule 26 of the Gujarat Civil Service (Conduct) Rule 71 which reads as under :-

"26 Plural Marriages - (1) No Government servant shall enter into or contract, a marriage with a person having a spouse living, and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person;

Provided that the State Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or (2), if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage, and

(b) there are other grounds for so doing."

(emphasis supplied)

Perusal of Clause (b) of the proviso of Sub rule 2 of Rule 26 is clear. It provides, that the State Government may permit a Government Servant to enter into or contract, any such marriage as is referred in Clause (1) or (2),if it is satisfied that:- (b) there are other grounds for so doing. With this Ms. Shah also invited the attention of the court to the fact that it was the case of petitioner no.1 that in fact he had taken divorce from his earlier wife and that the material to that effect was already produced on record. However, it seems that with a view to see that no stigma is attached, to the earlier wife of the petitioner no.1, instead of pressing the material regarding the divorce into service, the affidavit filed by earlier wife of the petitioner no.1 was pressed into service. It is important to note at this juncture that in affidavit of the earlier wife of the petitioner no.1 it is clearly mentioned that she had four children two sons and two daughters from the wedlock of the petitioner no.1 of which two sons have expired and that the earlier wife of the petitioner no.1 is not keeping good health for last five years and she has no chance of having a son born and that she is not able to look after her husband, are the sufficient grounds on which the State Authority could have granted the permission as is mentioned in Clause (b) of the proviso to Sub rule 2 of Rule 26.

#. It is also equally important to note that when this matter came to be filed before this Hon'ble Court on 5.12.1986, this Court was pleased to issue notice making it returnable on 18.12.1986 and was pleased to grant ad interim relief in terms of para 11 (B) till 22.12.1986. The said interim relief continued from time to time and ultimately when this Court was pleased to issue rule in the matter on 25.3.1987, the ad interim relief was made interim relief. It is also found on perusal of the order sheet that this Court was pleased to grant time of fortnight to comply with the order of this Court, so far as petitioner no.2 is concerned. Ms. Shah learned counsel for the petitioner made a statement that thereafter petitioner no.2 has also continued in service and she is in service till date. It is submitted by Ms.Shah that the petitioner no.1 had joined service in the year 1970 and at the relevant time he had put in 17 years of service and petitioner no.2 had joined service in the year 1978 and that she has continued in service till date.

#. In view of the foregoing discussion this court does not find any reason for allowing the impugned order to become effective at this late stage, more particularly, when on overall view of the matter this is not a case wherein the petitioner nos. 1 and 2 can be said to have indulged in an act just for lust. On the contrary it is clear from the facts that it is a genuine case wherein looking to the set up of the society, the earlier wife of the petitioner no.1 consented to marriage of petitioner no.1 with the petitioner no.2. In that view of the matter to take such a view and to impose penalty of dismissal on both the petitioners is not warranted.

#. The impugned order dtd.6.3.86 is quashed and set aside alongwith the order in appeal dtd.11-10/11/-86.

#. In the result petition is allowed. Rule made absolute with no order as to costs.

kks